



## SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-508, OMB Control No. 3235-0565]

### **Proposed Collection; Comment Request; Extension: Rule 482**

Upon Written Request, Copies Available From

Securities and Exchange Commission

Office of FOIA Services

100 F Street, NE

Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (“Paperwork Reduction Act”), the Securities and Exchange Commission (the “Commission”) is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (“OMB”) for extension and approval.

Like most issuers of securities, when an investment company (“fund”)<sup>1</sup> offers its shares to the public, its promotional efforts become subject to the advertising restrictions of the Securities Act of 1933 (15 U.S.C. 77) (the “Securities Act”). In recognition of the particular problems faced by funds that continually offer securities and wish to advertise their securities, the Commission has previously adopted advertising safe harbor rules. The most important of these is rule 482 (17 CFR 230.482) under the Securities Act, which, under certain circumstances, permits funds to advertise investment performance data, as well as other information. Rule 482 advertisements are deemed to be “prospectuses” under Section 10(b) of the Securities Act (15 U.S.C. 77j(b)).

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<sup>1</sup> “Investment company” refers to both investment companies registered under the Investment Company Act of 1940 (“Investment Company Act”) (15 U.S.C. 80a-1 *et seq.*) and business development companies.

Rule 482 contains certain requirements regarding the disclosure that funds are required to provide in qualifying advertisements. These requirements are intended to encourage the provision to investors of information that is balanced and informative, particularly in the area of investment performance. For example, a fund is required to include disclosure advising investors to consider the fund's investment objectives, risks, charges and expenses, and other information described in the fund's prospectus, and highlighting the availability of the fund's prospectus. In addition, rule 482 advertisements that include performance data of open-end funds or insurance company separate accounts offering variable annuity contracts are required to include certain standardized performance information, information about any sales loads or other nonrecurring fees, and a legend warning that past performance does not guarantee future results. Such funds including performance information in rule 482 advertisements are also required to make available to investors month-end performance figures via website disclosure or by a toll-free telephone number, and to disclose the availability of the month-end performance data in the advertisement. The rule also sets forth requirements regarding the prominence of certain disclosures, requirements regarding advertisements that make tax representations, requirements regarding advertisements used prior to the effectiveness of the fund's registration statement, requirements regarding the timeliness of performance data. In addition, rule 482(b) describes the information that is required to be included in an advertisement, including a cautionary statement under rule 482(b)(4) disclosing the particular risks associated with investing in a money market fund.

On October 26, 2022, the Commission adopted rule and form amendments that modernize the requirements for annual and semi-annual shareholder reports provided by open-end management investment companies.<sup>2</sup> The Commission also adopted amendments to the

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<sup>2</sup> Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements, Investment Company Act Release No. 34731 (Oct. 26, 2022), 87 FR 72758 (Nov. 25, 2022) (the "Adopting Release").

advertising rules for registered investment companies and business development companies to promote more transparent and balanced statements about investment costs. The advertising rule amendments require that investment company advertisements providing fee and expense figures include: (1) the maximum amount of any sales load or any other nonrecurring fee; and (2) the total annual expenses without any fee waiver or expense reimbursement arrangement. Under the amendments to rule 482, investment company fee and expense presentations in advertisements must include timely and prominent information about a fund's maximum sales load (or any other nonrecurring fee) and gross total annual expenses, based on the methods of computation that the company's Investment Company Act or Securities Act registration statement form prescribes for a prospectus.

Rule 482 advertisements must be filed with the Commission or, in the alternative, with the Financial Industry Regulatory Authority ("FINRA").<sup>3</sup> This information collection differs from many other federal information collections that are primarily for the use and benefit of the collecting agency.

Rule 482 contains requirements that are intended to encourage the provision to investors of information that is balanced and informative, particularly in the area of investment performance. The Commission is concerned that in the absence of such provisions fund investors may be misled by deceptive rule 482 advertisements and may rely on less-than-adequate information when determining in which funds they should invest money. As a result, the Commission believes it is beneficial for funds to provide investors with balanced information in fund advertisements in order to allow investors to make better-informed decisions.

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<sup>3</sup> See note to rule 482(h) under the Securities Act, which states that "these advertisements, unless filed with [FINRA], are required to be filed in accordance with the requirements of §230.497." See also rule 24b-3 under the Investment Company Act (17 CFR 270.24b-3), which provides that any sales material, including rule 482 advertisements, shall be deemed filed with the Commission for purposes of Section 24(b) of the Investment Company Act upon filing with FINRA.

The table below summarizes our estimates associated with the amendments to rule 482 that the Adopting Release addresses:

### **RULE 482 PRA ESTIMATES**

	Internal initial hour burdens	Internal annual burden <sup>1</sup>	Wage Rate <sup>2</sup>	Internal Time Costs
<b>FINAL ESTIMATES FOR RULE 482</b>				
New general requirements re: fee and expense figure disclosure		6 hours <sup>3</sup>		\$2,286
	9 hours		\$381	
Number of responses to rule 482 that include fee/expense figure disclosure		x 36,492 <sup>4</sup> responses	(blended rate for compliance attorney and senior programmer)	x 36,492 responses
<b>Total burden of new requirements for fee and expense disclosure</b>		<b>218,952 hours</b>		<b>\$83,420,712</b>
New requirements for disclosure of fee waivers/expense reimbursement arrangements	6 hours	4 hours <sup>5</sup>		\$1,524
			\$381	
Number of responses to rule 482 that disclose fee waivers/expense reimbursement arrangements		x 36,492 responses	(blended rate for compliance attorney and senior programmer)	x36,492 responses
<b>Total burden of annual requirements for disclosure of fee waivers/expense reimbursement arrangements</b>		<b>145,968 hours</b>		<b>\$55,613,808</b>
<b>Total annual burden</b>		<b>364,920 hours</b>		<b>\$139,034,520</b>
<b>TOTAL FINAL ESTIMATED BURDENS INCLUDING AMENDMENTS</b>				
<b>Current burden estimates</b>		<b>212,927 hours</b>		<b>\$74,098,735</b>
<b>Revised burden estimate</b>		<b>577,847 hours</b>		<b>\$213,133,255</b>

Notes:

1. Includes initial burden estimates annualized over a 3-year period.

2. These PRA estimates assume that the same types of professionals would be involved in preparing advertisements (reflecting the proposed and final amendments to rule 482) that we believe otherwise would be involved in preparing a fund's advertisements. The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's *Office Salaries in the Securities Industry 2013*. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. See Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.

3. This estimate assumed that, after the initial 9 hours that an entity would spend on the proposed fee and expense disclosure, which we annualize over a 3-year period, the entity would incur 3 additional burden hours associated with ongoing compliance with these requirements per year. The estimate of 6 hours is based on the following calculation: ((9 initial hours / 3) + 3 hours of additional ongoing burden hours) = 6 hours.

4. The Commission estimates that there was a total of 41,953 responses to rule 482 that either were filed with FINRA or with the Commission in 2021. Of those, the Commission estimates that 1,124 were responses from closed-end funds and BDCs, and that 2,816 were responses from variable insurance contracts. The number of responses filed with the SEC is based on the average number of responses filed with the Commission from 2019-2021. The Commission assumes that, moving forward, closed-end funds and BDCs will choose to use free writing prospectuses under rule 433, and also that variable insurance contracts will not be subject to the amendments to rule 482. Therefore, we exclude closed-end funds, BDCs, and variable insurance contracts from the total responses to rule 482 for purposes of this estimate. For purposes of estimating the burden of the final rules amendments, we estimate that 38,013 responses to rule 482 are filed annually. We estimate that approximately 96% of these rule 482 responses provide fee and expense figures in qualifying advertisements and would, therefore, be required to comply with the final rule amendments regarding such information (for example, ensuring that the fee and expense figures are presented in accordance with the prominence and timeliness requirements in the amendments to rule 482).

5. This estimate assumed that, after the initial 6 hours that an entity would spend on the proposed fee waiver and expense reimbursement requirements, which we annualized over a 3-year period, the entity would incur 2 additional burden hours associated with ongoing compliance with these requirements per year. The estimate of 4 hours is based on the following calculation ((6 initial hours / 3) + 2 hours of additional ongoing burden hours) = 4 hours.

The table above summarizes our PRA initial and ongoing annual burden estimates associated with rule 482, as amended. In the aggregate, we estimate the total annual burden to comply with amended rule 482 to be 577,847 hours, at an average time cost of \$213,133,255.

The information provided under rule 482 will not be kept confidential. The provision of information under rule 482 is necessary to obtain the benefits of the safe harbor offered by the rule.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street, NE Washington, DC 20549 or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: April 19, 2023.

**Sherry R. Haywood,**

*Assistant Secretary.*

